

Chapter VIII

Organization of the Legislature

The New Member

During an election campaign, the attentions of the candidate are primarily focused on matters political, planning and building for the goal of gaining votes. When the excitement of election night has passed, the Member-elect begins a new journey, one which culminates in membership in the California Legislature.

After the election, the Secretary of State compares and estimates the vote cast and then delivers to the successful candidates a certificate of election which serves as *prima facie* evidence of the candidates' right to membership in the Legislature.¹

As a first step to realization of this right, the new legislator appears in the Assembly Chamber, if he or she be an Assembly Member-elect, or in the Senate Chamber, if he or she be a Senator-elect, at 12 o'clock noon on the opening day of the session.² At that time the Chief Clerk of the last regular session calls the Assembly to order,³ while the Lieutenant Governor performs the similar duty in the Senate.⁴ A prayer is offered in each house by the respective Chaplain of the last regular session, after which the Reading Clerk (in the Assembly) and the Assistant Secretary (in the Senate) reads the certificate of duly elected members as certified by the office of the Secretary of State.

In the Assembly, the Reading Clerk then calls the roll of counties in alphabetical order. As the counties are called, the member-elect representing such county or counties takes the oath of office prescribed by the Constitution,⁵ which is administered by a justice or judge of the California courts, or other appropriate official.⁶ Procedure in the Senate is similar to that of the Assembly with the exception that only the newly elected half of the membership of the Senate takes office on the opening day of the general session, and the roll is called by district instead of by county.⁷ Oaths of office in the Senate are also administered by a justice or judge of the California courts, or other appropriate official. The oath taken by each Member of the Legislature is reprinted in the journals of the respective houses.⁸

The Constitution provides that Members of the Legislature, before they enter upon the duties of their offices, must take and subscribe to

¹ *Elections Code*, Section 17123; *Government Code*, Section 9021.

² *Constitution*, Article IV, Section 3(a); *Government Code*, Section 9020.

³ *Government Code*, Section 9023. In case of the absence or inability of the Chief Clerk of the Assembly, the senior member-elect present shall take the chair. If there is more than one senior member-elect present and the senior members are unable to agree as to who shall call the session to order, the Attorney General or one of his deputies shall call the session to order.

⁴ *Government Code*, Section 9022. In case of the absence or inability of the President of the Senate, the senior member present shall take the chair.

⁵ *Constitution*, Article XX, Section 3; *Government Code*, Section 9023.

⁶ See for example, *Journal of the Assembly, 1983-84 Session*, December 6, 1982, p. 5 (Members sworn in by the Governor); *Journal of the Assembly, 1979-80 Session*, December 4, 1978, p. 5 (sworn in by Legislative Counsel).

⁷ *Government Code*, Section 9022.

⁸ *Government Code*, Section 9025.

the constitutional oath of office.⁹ Members of the Legislature who do not take the oath of office on the opening day of the Legislature may take the oath at any time during the term for which they are elected.¹⁰

The President or President pro Tempore of the Senate may administer the oath of office to any Senator, and the Speaker or Speaker pro Tempore of the Assembly may administer the oath of office to any Assembly Member.¹¹ When this oath of office has been taken, the successful candidate has become a Member of the Legislature.

One of the first tasks confronting the new member, and it is an important one, is to meet and be met by other members. Nowhere is this activity more important than in the member's initial contact with his or her seatmate, whose company will be almost constant during floor sessions and upon whom the member will often rely for conversation and counsel.

Election of Assembly Officers

The first order of business after the new members have taken their oaths of office is the nomination and election of the officers of each house.¹² In the Assembly, a Speaker, a Speaker pro Tempore, a Chief Clerk, a Sergeant at Arms, and a Chaplain are nominated and elected by a majority vote of the duly elected and qualified members.¹³ The Minute Clerk of the Assembly is appointed by the Chief Clerk, subject to approval by the Assembly Rules Committee. Each officer, upon his or her election, takes the constitutional oath of office.¹⁴ The Speaker appoints an Assistant Speaker pro Tempore whose duty is to preside over the sessions of the Assembly in the event of the absence of the Speaker and the Speaker pro Tempore;¹⁵ a Majority Floor Leader is appointed by the Speaker, after consultation with his or her supporting majority;¹⁶ and a Minority Floor Leader is selected by the minority caucus.¹⁷ The Speaker, Speaker pro Tempore, Assistant Speaker pro Tempore, and the Majority and Minority Floor Leaders are chosen from the membership of the House, but the other elected officers are not Members of the Legislature.

The Speaker of the Assembly retains all of his or her rights as a member, and votes upon all measures that come before the

⁹ *Constitution*, Article XX, Section 3. The second paragraph of the oath proscribing membership in organizations advocating overthrow of federal or state government was ruled unconstitutional (under the U.S. Constitution's freedom of speech protections) by the California Supreme Court in 1967. *Vogel v. Los Angeles County*, 68 Cal. 2d 18. This invalidation did not affect the first paragraph of the oath, however, which is still in use. *Smith v. County Engineer of San Diego County*, 266 Cal. App. 2d 645 (1968), and *Chilton v. Contra Costa Community College District*, 55 Cal. App. 3d 544 (1976).

¹⁰ *Constitution*, Article XX, Section 3; *Government Code*, Section 9024.

¹¹ *Government Code*, Section 9190.

¹² *Constitution*, Article IV, Section 7(a); *Government Code*, Sections 9022, 9023.

¹³ *Government Code*, Sections 9171, 9172. In effect this means that if all 80 Members of the Assembly have duly qualified (taken the oath of office), it would require 41 votes to elect a Speaker. However, the Legislative Counsel has indicated that if only 79 of the 80 members elected had taken the oath of office at the time the Speaker was to be elected, he or she could be elected by a 40 to 39 vote, as only 79 members would have been duly elected and qualified within the meaning of *Government Code* Section 9171. See *Journal of the Assembly, 1925 Session*, p. 4, where a Speaker was elected by a vote of 40 to 39. This same *Journal* (p. 1) indicates that 80 Members of the Assembly were elected, but only 79 had taken the oath of office prior to the election of the Speaker (p. 3).

¹⁴ *Constitution*, Article XX, Section 3. See also, footnote 9, *supra*.

¹⁵ *Assembly Rules* 3, 28.5.

¹⁶ *Government Code*, Sections 9171, 9172; *Assembly Rule* 29.

¹⁷ *Government Code*, Sections 9171, 9172; *Assembly Rule* 30.

Assembly. He or she does not, however, have tie-breaking vote capabilities and if there is a tie vote in the Assembly, the measure under consideration is defeated.¹⁸

During the 1961 Regular Session, the Assembly adopted new procedures to fill vacancies occurring in the elected officer positions while the Assembly was not in session. One provided for the calling of a caucus to select a Speaker in the event of a vacancy in that office after *sine die* adjournment of the session. The requirement that a majority of the elected membership of the Assembly is necessary to select a Speaker was retained. The procedure at the caucus is the same as the procedure required for the election of a Speaker at the opening of a regular session.

The Legislative Counsel rendered his opinion that the Chief Clerk of the Assembly should preside over the caucus until the election of a Speaker.

When a vacancy occurred in the office of Speaker in 1961, a caucus of the Members of the Assembly was held on September 30, 1961, and the Honorable Jesse M. Unruh, was elected.¹⁹ This was the first and only time in the history of the Assembly that this procedure was followed. Assemblyman Unruh continued to serve as Speaker of the Assembly until 1969.

The other change permitted the Rules Committee to fill any vacancy in any of the elected officer positions in the Assembly which occurred after adjournment of the session.²⁰

The present Assembly Rules contain the same provisions but now provide for the filling of vacancies during joint recesses rather than after final adjournment. With the present biennial sessions, the period between adjournment and the convening of the next Legislature is only a few days while a joint recess may exceed three months.

Election of Senate Officers

The Constitution provides that the Lieutenant Governor shall be President and presiding officer of the Senate, therefore no election is required for that position.²¹ The Senators do, however, elect a President pro Tempore from their membership to preside in the absence or disability of the Lieutenant Governor, and the Vice Chairperson of the Committee on Rules shall assume the duties and powers of the President pro Tempore in his or her absence.²²

Members of the Committee on Rules, a Secretary and a Sergeant at Arms are also elected.²³ The Senate officers, upon their election, also take the constitutional oath of office. The Assistant Secretary, a Minute Clerk, and a Chaplain are appointed by the Senate Rules Committee.²⁴

¹⁸ *Assembly Rule 107.*

¹⁹ On September 19, 1961, Speaker Ralph M. Brown resigned from the Assembly, and on September 30, 1961, Hon. Jesse M. Unruh was elected Speaker of the Assembly by the caucus. (See *Appendix to Journal of the Assembly*, 1961, p. 6210.)

²⁰ *Assembly Rule 34.*

²¹ *Constitution*, Article V, Section 9.

²² *Senate Rule 7.*

²³ *Government Code*, Section 9170; *Senate Rule 10.5.*

²⁴ *Senate Rule 10.5.*

The Lieutenant Governor, even though he or she is the President of the Senate, does not have the right to introduce or debate a bill, nor can he or she vote upon a measure except when there is a tie vote in the Senate, at which time he or she may cast the deciding vote. When 21 votes are necessary to pass a bill,²⁵ the Lieutenant Governor would have a casting vote if the tie vote were 20 to 20, but he or she would not have a casting vote if the vote were 19 to 19, since his or her vote would not decide the question.²⁶ The Senator who has been elected President pro Tempore does not possess the tie-breaking vote capability, but retains all of his or her rights as a Senator.

Inauguration of Governor and Lieutenant Governor

The members formerly had the opportunity of watching the Speaker of the Assembly open the sealed election returns for Governor and Lieutenant Governor,²⁷ and of then observing these newly elected officers take their oaths of office before the Legislature meeting in Joint Convention.²⁸ This was an impressive ceremony, but consumed a great amount of time, so the people, in 1940, amended the Constitution permitting the Legislature to regulate by law the manner of making election returns for Governor and Lieutenant Governor.²⁹ This provision was subsequently repealed as being unnecessary.³⁰

The law now provides that when the Secretary of State has compared and estimated the vote cast, a certificate of election shall be made out and delivered, or transmitted by mail, to each person elected.³¹

In 1943, the law requiring that the Governor and the Lieutenant Governor take the official oath in the presence of both houses of the Legislature was repealed and a new law enacted which provided that each may take his or her oath at any time before taking office after receipt of his or her certificate of election and before any officer authorized to administer oaths.³²

The Rules of the Legislature

The organization of the Legislature is completed with the adoption of Standing Rules which regulate the procedure of each house, and Joint Rules which govern procedure between the two houses.

The Constitution provides that each house shall adopt rules for its proceedings, and may, with the concurrence of two-thirds of all the members elected, expel a member.³³

²⁵ See *Senate Rule 47* for actions which require 21 votes in the Senate; also for actions which require a greater or lesser number of votes.

²⁶ *Constitution*, Article V, Section 9; *Mason's Manual of Legislative Procedure* (1979 edition), Section 513(2).

²⁷ *Constitution*, Article V, Section 4 (repealed, November 5, 1940).

²⁸ *Political Code*, Section 905 (enacted 1872; repealed 1943).

²⁹ *Constitution*, Article V, Section 4.5 (enacted November 5, 1940; amended and renumbered Section 4, November 8, 1960; repealed, November 8, 1966).

³⁰ *Ballot Proposition 1-a, Assembly Constitutional Amendment No. 13*, 1966 First Extraordinary Session. See *Proposed Revision of the California Constitution*, February 1966, California Constitution Revision Commission, p. 74.

³¹ *Elections Code*, Section 17123.

³² *Government Code*, Sections 1360, 1362.

³³ *Constitution*, Article IV, Sections 5, 7.

In essence, the Senate and Assembly Rules (the Standing Rules) prescribe the procedure of the houses as they relate to bills, amendments, committees, printing, expenses, parliamentary procedure, duties of the officers, and members' decorum and privileges.

Order of Business

Each house, by rule, provides and arranges its own order of business in such a manner that the routine work of the body is disposed of before debatable issues are considered.

The following orders of business have been adopted by the individual houses:

*Senate*³⁴

1. Roll Call
2. Prayer by the Chaplain
3. Privileges of the Floor
4. Communications and Petitions
5. Messages From the Governor
6. Messages From the Assembly
7. Reports of Committees
8. Motions, Resolutions, and Notices
9. Introduction and First Reading of Bills
10. Consideration of Daily File
 - (a) Second Reading
 - (b) Special Orders
 - (c) Unfinished Business
 - (d) Third Reading
11. Announcement of Committee Meetings
12. Continuation of Privileges of the Floor
13. Leaves of Absence
14. Adjournment

*Assembly*³⁵

1. Roll Call
2. Prayer by the Chaplain
3. Reading of the Previous Day's Journal
4. Presentations of Petitions
5. Introduction and Reference of Bills
6. Reports of Committees
7. Messages From the Governor
8. Messages From the Senate
9. Motions and Resolutions
10. Business on the Daily File
11. Announcements
12. Adjournment

Pledge of Allegiance to the Flag

Though not specifically listed in the order of business for the Assembly, the Rules of the Assembly provide that at each session, following the prayer by the Chaplain, the Members of the Assembly and its officers and employees shall pledge allegiance to the Flag of the United States of America.³⁶ The rule also directs the Speaker to invite guests present in the Assembly Chamber to join in the pledge.

³⁴ *Senate Rule 4.*

³⁵ *Assembly Rule 40.*

³⁶ *Assembly Rule 41.* This ceremony was first made a part of the Assembly Standing Rules on January 25, 1941, when House Resolution No. 39, offered by Assemblyman Thomas J. Doyle on January 17, 1941, was unanimously adopted by the Assembly. *Journal of the Assembly for the Fifty-fourth Session, 1941*, Volume 1, pp. 270, 574, 575. As a matter of practice the pledge of allegiance is rendered at the beginning of each day's session in the Assembly.

